

## Goeke Supp. Declaration Exhibit 42

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MARYLAND  
(Southern Division)

---oOo---

DAN FRANKENSTEIN, INDIVIDUALLY,  
AND ON BEHALF OF ALL OTHERS  
SIMILARLY SITUATED, AND ON BEHALF  
OF THE HMSHOST 401(k) RETIREMENT  
SAVINGS PLAN AND TRUST,  
Plaintiff(s),

v.

No. 8:20-cv-01100-PJM

HOST INTERNATIONAL, INC.; HMSHOST  
401(k) RETIREMENT SAVINGS PLAN AND  
TRUST RETIREMENT COMMITTEE; COLEMAN  
LAUTERBACH; AND DOES NO. 1-10, WHOSE  
NAMES ARE CURRENTLY UNKNOWN,  
Defendant(s).

\_\_\_\_\_/

VIDEOTAPED DEPOSITION OF  
COLEMAN LAUTERBACH  
TUESDAY, JUNE 14, 2022

Reported by:  
KAREN A. URBANO, CSR License No. 6698  
Registered Professional Reporter  
Job No: 5261871

1 changing -- are there any considerations to change the  
2 Tips Policy today if you know?

3 A. I don't know.

4 Q. All right. And, in connection with the  
5 review of Mr. Frankenstein's appeal, do you know 01:54  
6 whether the Tips Policy was considered?

7 A. The -- in as much as the policy talks about  
8 tips must be paid out at the end of every shift, yes,  
9 that's a company policy that the committee had to  
10 consider in considering this case or this -- the 01:54  
11 appeal. Sorry.

12 Q. Okay. We have the plan document, which is  
13 Exhibit 3 -- will be Exhibit 3.

14 (Exhibit 3 was marked.)

15 MS. ROSS: I'm going to object to the 01:55  
16 characterization of this as the plan document.

17 Q. BY MR. KRAVITZ: Okay. I think you're  
18 welcome to do that.

19 And you indicated earlier that you had read  
20 the document. Is this the plan document that you 01:55  
21 read, and I can give you control over the --

22 A. Just to clarify, I will tell you that I've  
23 read most of this document. I've not sat down and  
24 read everything from beginning to end of this  
25 document. 01:55

1 As -- there's something in the plan that I  
2 need to look at, I'll search for that -- for that  
3 section and then review that section.

4 Q. Okay.

5 A. Does that clarify what -- does that clarify 01:56  
6 my statements that I've made?

7 Q. No, it does. Thank you. I appreciate that.

8 Stop the share on that one. I think you  
9 already testified earlier then, the context of  
10 reviewing the appeal of Mr. Frankenstein, the plan 01:56  
11 itself was not reviewed; is that right?

12 A. When we talked -- you talked about the  
13 appeal, you're talking --

14 Q. Correct, yeah. I'll put it back up. Yeah.  
15 In the context of the appeal, do you remember 01:56  
16 reviewing the plan document?

17 A. I reviewed the plan document, the particular  
18 areas of concern, during the claim process. I  
19 didn't -- I didn't need to review it again during the  
20 appeal process. 01:57

21 Q. And when you say "the claim process," when  
22 Mr. Frankenstein first submitted his claim; is that  
23 what you're referring to?

24 A. Correct.

25 Q. And what part of the plan did you review at 01:57

1 that time?

2 A. I -- I can't rattle off the sections here. I  
3 guess as I'm looking at it, I probably could. But the  
4 claim was made about his desire to have -- about money  
5 taking -- contributing to the 401(k) plan that would 01:57  
6 come from his pay.

7 And the conversation or the way that I looked  
8 at this is whether or not there was sufficient  
9 available compensation to make contributions or not  
10 into the plan. 01:58

11 And so, as we're looking at this, I see right  
12 here it's section five. I'm sorry. I don't remember  
13 the exact sections where everything is. But that's  
14 where I had to review whether or not there was any  
15 kind of merit to the claim. 01:58

16 My expectation, as I discussed with Regina  
17 and my team at the time, was the -- if the tips were  
18 part of effectively available compensation, it  
19 would -- there would be no problem here, but they're  
20 not. 01:58

21 And, so reviewing this section of the plan  
22 was necessary to come to a conclusion about -- about  
23 approving or denying the initial claim.

24 Q. And did you review Section 5.02, Compensation  
25 Taken into Account in Determining Contributions. Do 01:59

1 | you remember reviewing that section?

2           A.           I'm sure it was these several sections here  
3           in Article 5.

4 (Off the record discussion.)

5 MR. KRAVITZ: Bear with me. All right. 01:59

6 Let's mark this as Exhibit Number 4.

7 (Exhibit 4 was marked.)

8 Q. BY MR. KRAVITZ: Which is an email from Joy  
9 Napier-Joyce to Carol Russell, Regina Dowdy, dated  
10 May 31, 2019, attaching a draft response to 02:01  
11 Mr. Frankenstein's claim to facilitate a discussion.

12                   And then after that, there's a draft response  
13           dated May 30, 2019, and I will try to allow you  
14           control of this if my laptop will let me.

```
15         Okay.  So you have control over this.  Should 02:01
16         be able to scroll through it.
```

17	A.	Okay.
----	----	-------

18 Q. And my first question is whether you have  
19 seen this email and draft letter before?

20	A. Yes.	02:01
----	---------	-------

21 Q. Did you receive a copy of this email and  
22 draft letter on or about May 31, 2019, or before?

23 MS. TROY: I apologize. This is Meg. What's  
24 up on my screen is not the exhibit we were just  
25 talking about. I think it's switched.

REPORTER'S CERTIFICATE

I certify that the foregoing proceedings in the within-entitled cause were reported at the time and place therein named; that said proceedings were reported by me, a duly Certified Shorthand Reporter of the State of California, and were thereafter transcribed into typewriting;

That before completion of the deposition, review of the transcript {X}was, { }was not requested. If requested, any changes made by the deponent (and provided to the reporter) during the period allowed are appended hereto.

I further certify that I am not of counsel or attorney for either or any of the parties to said cause of action, nor in any way interested in the outcome of the cause named in said cause of action.

IN WITNESS WHEREOF, I have hereunto set my hand this 28th day of June, 2022.

Karen A Urbano

---

KAREN A. URBANO

California CSR No. 6698

1 Nancy Ross, Esquire

2 nross@mayerbrown.com>

3 June 24, 2022

4 RE: Frankenstein, Dan v. Host International Inc., Et Al.

5 6/14/2022, Coleman Lauterbach (#5261871)

6 The above-referenced transcript is available for  
7 review.

8 Within the applicable timeframe, the witness should  
9 read the testimony to verify its accuracy. If there are  
10 any changes, the witness should note those with the  
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of  
13 Deponent and Errata and return to the deposing attorney.  
14 Copies should be sent to all counsel, and to Veritext at  
15 cs-midatlantic@veritext.com

16  
17 Return completed errata within 30 days from  
18 receipt of testimony.

19 If the witness fails to do so within the time  
20 allotted, the transcript may be used as if signed.

21  
22 Yours,

23 Veritext Legal Solutions  
24  
25



Frankenstein, Dan v. Host International Inc., Et Al.  
Coleman Lauterbach (#5261871)

E R R A T A S H E E T

PAGE\_\_\_\_\_ LINE\_\_\_\_\_ CHANGE\_\_\_\_\_

REASON\_\_\_\_\_

PAGE\_\_\_\_\_ LINE\_\_\_\_\_ CHANGE\_\_\_\_\_

REASON\_\_\_\_\_

PAGE\_\_\_\_\_ LINE\_\_\_\_\_ CHANGE\_\_\_\_\_

REASON\_\_\_\_\_

PAGE\_\_\_\_\_ LINE\_\_\_\_\_ CHANGE\_\_\_\_\_

REASON\_\_\_\_\_

PAGE\_\_\_\_\_ LINE\_\_\_\_\_ CHANGE\_\_\_\_\_

REASON\_\_\_\_\_

PAGE\_\_\_\_\_ LINE\_\_\_\_\_ CHANGE\_\_\_\_\_

REASON\_\_\_\_\_

Coleman Lauterbach

Date

1 Frankenstein, Dan v. Host International Inc., Et Al.

2 Coleman Lauterbach (#5261871)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Coleman Lauterbach, do hereby declare that I  
5 have read the foregoing transcript, I have made any  
6 corrections, additions, or changes I deemed necessary as  
7 noted above to be appended hereto, and that the same is  
8 a true, correct and complete transcript of the testimony  
9 given by me.

10  
11 \_\_\_\_\_  
12 Coleman Lauterbach

\_\_\_\_\_ Date

13 \*If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 \_\_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_\_\_.

16  
17  
18 \_\_\_\_\_  
19 NOTARY PUBLIC  
20  
21  
22  
23  
24  
25